



WISCONSIN

**DEPARTMENT OF WORKFORCE DEVELOPMENT**  
Division of Economic Support  
Bureau of Welfare Initiatives

**TO: Economic Support Supervisors  
Economic Support Lead Workers  
Training Staff  
FSET Administrative and Provider Agencies  
Child Care Coordinators  
W-2 Agencies**

**BWSP OPERATIONS MEMO**

**No.: 99-86**

**File: 2740.1**

**Date: 11/16/99**

**Non W-2 [X] W-2 [X] CC [ ]**

**PRIORITY: URGENT**

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**SUBJECT: MA – FAMILY FISCAL UNIT POLICY CHANGES**

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**CROSS REFERENCE:** Addis, et.al. v. Whitburn, et.al.

**EFFECTIVE DATE**

The policy described in this memo applies to eligibility determinations made on or after November 1, 1999. Any applications, reviews or changes for which Medicaid FFU eligibility is done on or after November 1, 1999, must be determined based upon the revised FFU eligibility rules contained in this memo.

While this policy is not effective before 11/1/99, the state will be redetermining the eligibility of named and un-named plaintiffs to the **Addis** case. If you were the worker on one of these cases, you will receive a letter from the state explaining what actions the state has take as part of the legal settlement agreement with the plaintiffs and their attorneys. MA eligibility certification for these cases will begin no earlier than September 1, 1998.

**PURPOSE**

This memo describes modifications to the Medicaid (MA) eligibility policies and processes known as Family Fiscal Unit (FFU) that are a result of a settlement agreement in the case of **Addis, et.al. v. Whitburn, et.al.**

**BACKGROUND**

In 1993, the 9<sup>th</sup> U.S. Circuit court of Appeals decided in **Sneede v. Kizer** that the financial resources of a family member who is not legally responsible for an individual couldn't be used to determine that individual's MA eligibility. Advocates in Wisconsin pointed to the **Sneede** decision and asked why Wisconsin MA eligibility policies were inconsistent with the 9<sup>th</sup> Circuit Court's interpretation of Title XIX (Medicaid).

Even though the 9<sup>th</sup> Circuit Court's decision and subsequent order was not binding to states outside of that circuit, Wisconsin recognized that the logic behind the decision was based upon a straightforward interpretation of §1902(a)(17)(D) of the Social Security Act. This provision states that in determining financial eligibility a state cannot "take into account the financial responsibility of any individual for any

applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21."

For this reason Department staff began working with the Health Care Financing Administration (HCFA) to develop a methodology that would meet the requirements described in the Social Security Act. HCFA subsequently used these discussions as the basis for a draft regulation, MB-0001, which mirrored Wisconsin's FFU approach. This draft rule was later withdrawn and has not been re-introduced.

Wisconsin's FFU policy involves testing individuals who have failed Family-MA (AFDC-MA, AFDC-related MA and Healthy Start (OBRA, Kids less than 6 years and Pregnant women) because of excess income and/or assets and where the group includes anyone of these:

1. Child (under age 18/19) with income or assets of his/her own
2. Pregnant woman with other children
3. Non-martial co-parent
4. Stepparent
5. Non-legally responsible relative (NLRR) child

The FFU policy can be shown in this series of steps:

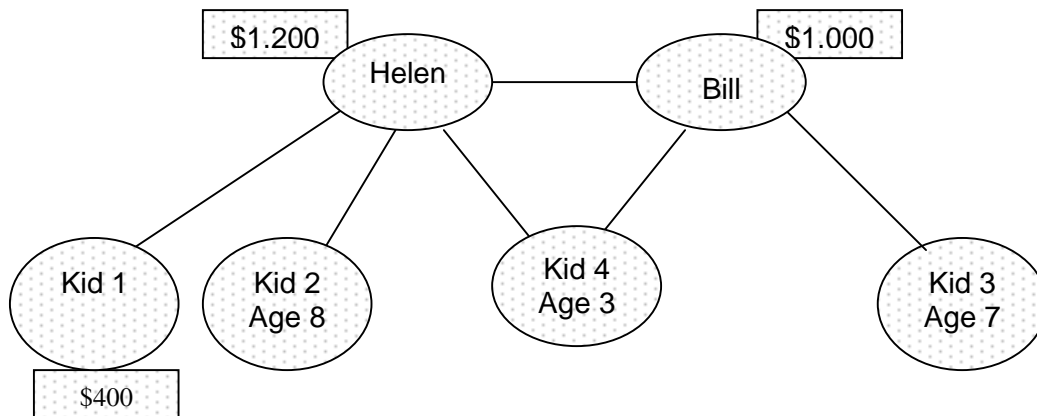
1. ACCUMULATE: Take each individual and add up all of his/her income and assets and then subtract the appropriate individualized income disregards and deductions.
2. PRORATE: Divide the adjusted total income/assets of the individual by the number of persons for whom s/he is legally responsible, as well as him or herself.
3. ALLOCATE: Allocate equal portions of the adjusted total income/assets of the individuals to those persons for whom s/he is legally responsible as well as him or herself.
4. Add up the total income of the individual from the amounts s/he allocated to him/herself and the income allocated to him/her from persons legally responsible for him/her.
5. Determine FFU Size: Determine which financial standard should be applied by looking at the individual then pulling in everyone into the FFU for whom s/he is legally responsible and everyone who is legally responsible for him/her. Continue to apply this standard to each new person who is pulled in, until you run out of individuals in the household.
6. Compare the total income of the individual with the appropriate FFU income limit. If the person is only ineligible because of excess income, compute an individual MA deductible amount.

## **DISCUSSION**

The FFU policy was the subject of the federal court case, **Addis, et.al. v. Whitburn, et.al.** In this lawsuit, the most substantial issue was whether the state was using the correct methodology for figuring out the FFU size. The case was begun in 1993 and was dismissed by the U.S. District Court. The plaintiffs appealed to the 7<sup>th</sup> Circuit U.S. Court of Appeals. The 7<sup>th</sup> Circuit remanded the case back to the federal district court, ordering that the court hear the case and asserting in its opinion that the state should not be including non-legally responsible relatives in determining FFU size.

Effective November 1, 1999, FFU size includes only the individual plus anyone in the household who is legally responsible for him or her. It does not include brothers, sisters, stepparents, etc. The rest of the FFU policy (accumulation, proration, allocation, etc.) remains the same.

**Example #1:** Helen has two children of her own. She is married to Bill who has one child from a previous relationship. She is the mother of one child with Bill. She has \$1200 in income and no assets. Bill has \$1000 in income and no assets. Kid 1 has \$400 in monthly child support income. They are applying for MA for themselves and their four children.



Under the old FFU policy, the group size would be 6 for each of the individual-based FFUs. The FFU limit for everyone would be 1/6 of group size 6.

**Example #1 (continued):** Under the new FFU policy, the groups and the participation status code of each person would be:

GROUP	GROUP SIZE	HELEN	BILL	KID #1	KID #2	KID #3	KID #4
Helen's	½ of 2	EA <sup>1</sup>	CA <sup>2</sup>	XC <sup>3</sup>	XC	XC	XC
Bill's	½ of 2	CA	EA	XC	XC	XC	XC
Kid #1's	½ of 2	CA	XA <sup>4</sup>	EC <sup>5</sup>	XC	XC	XC
Kid #2's	½ of 2	CA	XA	XC	EC	XC	XC
Kid #3's	½ of 2	XA	CA	XC	XC	EC	XC
Kid #4's	1/3 of 3	CA	CA	XC	XC	XC	EC

- Helen's group would only include herself and her husband. Her income would be compared to ½ of the group size 2 standard. Bill's group would be treated the same.
- Since Kids #1, #2 and #3 each have only one legally responsible relative (one parent) in the household, each child's income (allocated and their own) would be compared to ½ of the group size 2 standard.
- Kid #4 has two legally responsible relatives in the household. Kid #4's income will be compared to 1/3 of the group size 3 standard.

- 1 EA = Eligible Adult. Count this adult's income, assets and needs (group size) in determining the assistance group's eligibility. If the assistance group is eligible, this adult is eligible for Medicaid.
- 2 CA = Counted Adult. Count this adult's income, assets and needs (group size) in determining the assistance group's eligibility. If the group is eligible, this adult is not eligible to receive benefits in this assistance group.
- 3 XC = Excluded Child. This child is excluded from all financial tests and is not eligible within this assistance group.
- 4 XA = Excluded Adult. This adult is excluded from all financial tests and is not eligible within this assistance group.
- 5 EC = Eligible Child. Count this child's income, assets (if necessary) and needs (group size) in determining the assistance group's eligibility. If the assistance group is eligible, this child is eligible for Medicaid.

**Example #2:** Pregnant Woman with other children. If in our example Helen were pregnant with twins, her standard would change. She counts for one person, her unborn children count for 2 and her husband (who is legally responsible for her) would make four. Her income would be compared to  $\frac{3}{4}$  of the group size 4 standard.

**Example #3:** In our example, Bill's 14-year-old nephews, Biff and Skip, move in. Biff and Skip should be tested separately in FFU. Both Biff and Skip's income will be tested against the group size one standard, since they do not have anyone legally responsible for them in the household.

## ***IMPLEMENTATION***

Changes to implement the new policy cannot be made in CARES for several months, therefore the eligibility worker must make sure that any person who is determined ineligible in the current FFU logic in CARES has his/her eligibility determined manually using the new policy rules. You can use the existing FFU worksheet found in the MA Handbook. Just use the policy described above to determine the appropriate FFU size and the correct income and asset standard for each assistance group.

## ***CONTACT***

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